

EXHIBIT 2

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**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

MICHAEL SKIDMORE, as Trustee for
the RANDY CRAIG WOLFE TRUST,

Plaintiff,

V.

LED ZEPPELIN; JAMES PATRICK PAGE; ROBERT ANTHONY PLANT; JOHN PAUL JONES; SUPER HYPE PUBLISHING, INC.; WARNER MUSIC GROUP CORP., Parent of WARNER/CHAPPELL MUSIC, INC.; ATLANTIC RECORDING CORPORATION; RHINO ENTERTAINMENT COMPANY

Defendants.

Case No. 15-cv-03462 RGK (AGRx)

Hon. R. Gary Klausner

**PLAINTIFF'S MEMORANDUM OF
POINTS AND AUTHORITIES IN
OPPOSITION TO MOTION FOR
SUMMARY JUDGMENT OR
PARTIAL SUMMARY JUDGMENT**

Date: March 28, 2016

Time: 9:00 a.m.

Room: 850

1 “equitable relief,” *Petrella* unequivocally held: “As to equitable relief, in
2 extraordinary circumstances, laches may bar at the very threshold the particular
3 relief requested by plaintiff.” *Id.* at 1262. “Extraordinary circumstances” are the ones
4 in which the equitable relief requested would result in “total destruction” of the
5 work. *Id.* at 1978 (discussing *Chirco v. Crosswinds Communities, Inc.*, 474 F.3d
6 227 (6th Cir. 2007) (denying request for order to demolish housing project based on
7 copyrighted architectural design because plaintiff waited years to file suit and failed
8 to take steps to halt the construction until the project was occupied); *New Era*
9 *Publications Int'l, ApS v. Henry Holt & Co.*, 873 F.2d 576, 584 (2d Cir. 1989)
10 (allowing plaintiff to recover “its damages remedy” but denying injunctive relief
11 ordering “total destruction” of the books because plaintiff waited until books were
12 printed and distributed before suing). Clearly, asking Defendants to disgorge profits
13 from the infringing work and credit Randy California for his original composition
14 does not result in the “total destruction” of *Stairway to Heaven*. Thus, laches cannot
15 operate as a complete bar to Plaintiff’s claim.

16 **IX. DEFENDANTS’ DEPOSIT COPY ARGUMENT MISSES THE MARK.**

17 Defendants’ attempt to claim that only the deposit copy of Taurus should be
18 used in the relevant comparisons. This is simply not accurate and Defendants do not

19 support their argument with any applicable case law. The deposit copy of Taurus
20 does not reflect the entirety of the musical composition in a work, which is instead
21 reflected by the composition of Taurus embodied in the 49-year old sound recording.

22 Stewart Decl., ¶29-33.

23 The deposit requirement under 17 U.S.C. § 408(b) “is to identify the
24 copyrighted work for the purposes of registration.” Paul Goldstein, Goldstein on
25 Copyright § 3.8 (2013). “Although the 1909 Copyright Act requires the owner to
26 deposit a ‘complete copy’ of the work with the copyright office, [the Ninth Circuit’s]
27 definition of a ‘complete copy’ is broad and deferential: ‘Absent intent to defraud
28 and prejudice, inaccuracies in copyright registrations do not bar actions for

1 infringement.’ ” Three Boys Music Corp., 212 F.3d at 486 (citing Harris v. Emus
2 Records Corp., 734 F.2d 1329, 1335 (9th Cir. 1984)); see also Scentsy, Inc. v. B.R.
3 Chase, 942 F. Supp. 2d 1045, 1050 (D. Idaho 2013) (finding that identification
4 materials are not required to disclose every element in which they claim a copyright);
5 KnowledgePlex, Inc. v. Placebase, Inc., C 08-4267 JF (RS), 2008 WL 5245484, at
6 *10 (N.D. Cal. Dec. 17, 2008) (finding the Ninth Circuit has rejected the argument
7 that claims are limited to the scope of the deposit copy). Indeed, under the 1909 Act,
8 a claimant could not submit a recording of the composition in lieu of a lead sheet. See
9 Copyright Act of 1909, § 12, 35 Stat. 1075 (1909) (repealed 1978).

10 Moreover, Defendants only cite Newton v. Diamond to support their argument,
11 a largely inapposite case focused on different issue. In Newton, which applied the
12 1976 Copyright Act, the sound recording had been licensed but the underlying
13 composition had not. Newton v. Diamond, 204 F. Supp. 2d 1244, 1249 (C.D. Cal.
14 2002), aff'd 388 F.3d 1189. The Court found that the use of the composition was de
15 minimis. Newton simply did not address when the composition contained in a sound
16 recording can be used as proof of the protected compositional elements of a work.

17 The Ninth Circuit has held that the composition elements reflected in a sound
18 recording, even if not on the deposit lead sheet, are to be considered by a jury. Three
19 Boys Music Corp., 212 F.3d at 486-87. If the differences do not result in prejudice
20 and are not the result of fraudulent intent, then the consideration of the composition
21 in the sound recording is appropriate. Id. Here, there is no prejudice and no fraud—
22 nor do Defendants attempt to argue there is any. Defendants’ own expert, Mathes,
23 demonstrated the relevance and necessity of examining the composition of the sound
24 recording of “Taurus” as his expert report explicitly compares the composition in the
25 sound recording of “Taurus” to the sound recording of Stairway to Heaven. Stewart
26 Decl. ¶32-33. When the opposing party’s *own expert* admits the relevance of the
27 composition in the sound recording it is an unambiguous sign that Defendants are
28 well aware of the material being compared and that they have suffered no prejudice.